POLICY
ON THE CRIMINAL JUSTICE SYSTEM
RESPONSE TO

VIOLENCE AGAINST WOMEN AND CHILDREN

Part 1

VIOLENCE AGAINST WOMEN IN RELATIONSHIPS POLICY

Updated: January 2000

BRITISH COLUMBIA

Ministry of Attorney General

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Introduction

Updated January 2000

The Ministry of Attorney General recognizes the need to address the response of the justice system to a problem of escalating concern - violence against women and children.

In an effort to ensure a coordinated and effective response to this type of violence, a policy with three components is being developed. They are:

Part 1 Violence Against Women in Relationships

Part 2 Sexual Assault

Part 3 Violence Against Children and Youth

Part 1 of the policy, Violence Against Women in Relationships, was developed in 1993 following a two-year consultative process to revise and expand the original 1986 Ministry of Attorney General Wife Assault policy. In 1996, the Violence Against Women In Relationships policy was updated again to reflect applicable changes to the *Criminal Code* and provincial legislation.

Since the 1996 update of the Violence Against Women in Relationships policy, a number of amendments have been made to the *Criminal Code* which impact on the policy:

- s.497, s.498, s.499 and s.503(2), *Criminal Code* – Release of Accused;
- s.515(4), (4.1) and (4.2), s.515(10) and (12), s.518(1), s.522(2.1) and (3), *Criminal Code* – Enhancement of protections for the victim on accused's release.

Representatives from the municipal chiefs of police, RCMP, Vancouver police department, Crown counsel, Corrections Branch and Victim Services Division have considered the intent of these legislative changes and prepared this Violence Against Women in Relationships policy update. The 2000 update substantially changes Police, section C, Response and Arrest and Crown, section C, Bail Hearing.

Violence Against Women in Relationships Policy

Introduction

The Violence Against Women in Relationships component of the policy on the Criminal Justice Response to Violence Against Women deals with a subject that poses ongoing challenges to officials in the justice system, to governments across Canada and to the general public — the abuse of women by their husbands or men with whom they have or have had relationships.

The policy directs the justice system to emphasize the criminality of violence within relationships and to take the necessary measures to ensure the protection of women and children who may be at risk.

This policy relates to the continuum of violence that occurs in relationships. It applies to a range of criminal activities from harassing telephone calls or mischief to aggravated assault. No matter which form it takes, the dynamics of abuse are the same.

In Canada during 1990, an average of two women every week were killed by their partners. Researchers and professionals working with assaulted women estimate that each year one in eight women, living in a relationship with a man, will be assaulted. In addition, research indicates that as many as 35 violent episodes may have occurred before a woman seeks police intervention.

In the past, the justice system response has been to consider "spouse assault" primarily a domestic or social problem, which is best handled outside the criminal justice system. In practice, that has meant criminal justice personnel often directed a couple towards counselling or conciliation services rather than dealing with the criminal nature of the assault. That approach has been ineffective in reducing the incidence of violence against women in relationships and has been inadequate in terms of protecting women.

As a result of a lack of understanding of the dynamics of wife abuse, the criminal justice system response has often created secondary victimization of women victims. In many cases which are reported to the criminal justice system women are blamed for the violence they experience — by the police because the woman may seem hysterical, violent or intoxicated; by Crown counsel because the woman may desire the husband back in the family home or may have failed to leave the situation; or by the court because the woman may refuse to testify.

The Ministry of Attorney General has expanded and improved upon guidelines for police, Crown counsel, corrections officials, justices of the peace and trial coordinators. The policy reinforces the Ministry of Attorney General's commitment to a multi-agency, coordinated effort, including cooperation with community agencies, in responding to a complex problem. The approach promoted within the policy emphasizes the need for arrest and rigorous prosecution of offences of violence against women in relationships, and attempts to balance the demands of the criminal justice system with the best interests of the victim.

Dynamics of Violence Against Women in Relationships

Violence is used by batterers to establish control over their partners. They use abusive tactics to control partners' actions. These tactics are often successful because of the fear and isolation a victim feels.

It may be difficult or impossible for a woman to leave the relationship because of love, cultural/religious values, socio-economic condition, fear or the denial of the violence in the relationship. Violence often escalates and may continue or worsen if the woman leaves the relationship. In addition, unique to the situation of violence in relationships, the accuser and accused usually reside within the same home, enabling the accused to further control or abuse the victim.

When abuse occurs, there is usually a power imbalance between the partners in the relationship. That power imbalance is perpetuated by societal and individual messages undermining the potential for women to gain control of their situations, and for men to be held accountable for their actions within a relationship. For example, a woman may receive constant indications from the abuser, and even family members, that it is inappropriate or futile for her to seek assistance from outside agencies with a "family problem". When police comply with the victim's wishes and do not recommend charges, or when Crown counsel refuse to approve charges because the victim is a reluctant witness, the abuser is reinforced in his belief that his behaviour is acceptable and more importantly, the false message that is repeatedly conveyed to the victim, that no help is available, is fortified by the inaction.

Accordingly, it is important that criminal justice system personnel recognize the power imbalance and the dynamics which operate to prevent a woman from taking steps to end abuse. A rigorous approach to arrest, charge and prosecution, as promoted by this policy, is necessary to help eliminate violence within relationships.

If a woman does become involved in the criminal justice system, her powerlessness must not be aggravated by failure to provide her with a full and sensitive explanation of the process. The importance of keeping her informed and supported throughout the case should not be underestimated.

Definition

For the purposes of this policy, violence against women in relationships is defined as physical or sexual assault, or the threat of physical or sexual assault of women by men with whom they have, or have had ongoing or intimate relationships, whether or not they are legally married or living together at the time of the assault or threat. Other behaviour, such as intimidation, mental or emotional abuse, sexual abuse, neglect, deprivation and financial exploitation, must be recognized as part of the continuum of violence against young and elderly women alike.[1]

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[1] The term "violence against women in relationships" encompasses common-law and dating relationships, and has been chosen after much debate and concern expressed over the use of gender neutral terms which fail to identify that the overwhelming majority of victims of violence within relationships are female. The term "spouse assault" is used in the British Columbia Crown Counsel Policy Manual and in most police policies. It is recognized that throughout Canada various terms are used, such as woman abuse, wife assault, family violence, conjugal violence, domestic violence and relationship violence.

In addition to addressing violence against women in heterosexual relationships, the policy is intended to prompt action to eliminate violence against males in homosexual relationships, against vulnerable males in heterosexual relationships, and against women in lesbian relationships. Therefore, this policy also applies where the victim of relationship violence is male or both partners are of the same sex and where the same dynamic described above exists.

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Police

A. Introduction

Violence within relationships has distinctive dynamics not found in other violent crimes. The use of violence within a relationship is not easily prevented. Increased public awareness, however, coupled with a rigorous arrest and charge policy have been shown to reduce violence committed against women by their partners.

For the safety and security of victims, the arrest and prosecution of offenders is of paramount importance.

B. Enforcement

1. All "spouse assault" calls and calls relating to violence within a relationship, as defined in this policy, must be given priority, as the victim may be at risk.

2. The attending officer will conduct a complete investigation and ensure that the victim is provided with the attending officer's name or number, the case number and a contact phone number.

3. No-contact conditions of bail/probation orders, s.810 recognizances and civil restraining orders (e.g., *Family Relations Act* orders) provide the victim some measure of protection, so it is important that police respond promptly to reported breaches of court orders. Police action should include a recommendation that charges be laid for breaches of these orders when evidence is available.

3a. Prior to enforcing the provisions of a court order, police must ensure that it is valid and has not been amended or superseded. Police should use CPIC and the Protection Order Registry to confirm the validity and enforceability of court orders.

3b. On occasion, there may be a conflict between civil and criminal orders (e.g., Family Relations Act order allowing access to children and a bail order containing a no-contact condition). In such cases, the most restrictive terms must be obeyed (e.g., the no-contact order overrides the access order).

C. Response and Arrest

4. Police officers, when there are grounds to believe an offence has occurred, should always arrest when it is in the public interest as set out in s.495 of the *Criminal Code*, including when it is necessary to secure the accused's attendance in court, or prevent the repetition of the offence or the commission of other offences (including interference with the administration of justice and intimidation of witnesses).

5. Once arrested, an accused may be

   i) released on an appearance notice or a summons;

   ii) released by a police officer on conditions;

   iii) held for a bail hearing before a Justice of the Peace or Provincial Court Judge and released on conditions; or

   iv) detained.

In cases of violence against women in relationships, there are usually concerns regarding the safety and testimonial integrity of the woman, her children and sometimes her extended family. As such, there are grounds to justify conditions of release in almost every case.

i) Appearance Notice or Summons

In cases of violence against women in relationships, it is not usually in the public interest for police to release an accused on an appearance notice or a summons, as no bail conditions can be attached to his release.

ii) Police Release

When an arrest is made, the release provisions of sections 497, 498, 499 and 503 of the *Criminal Code* apply. The sections have been amended in June 1997 and December 1999 to empower the police to release an accused on conditions similar to those of a justice of the peace or a judge, without the necessity of taking an accused before one of them. However, these sections provide that police should not release an accused if they believe, on reasonable grounds, that it is necessary in the public interest to detain him in custody or to deal with his release through a bail hearing having considered the need to establish identity, to secure or preserve evidence, to prevent the continuation or repetition of the offence or to ensure the safety and security of any victim of or witness to the offence.

Release is accomplished by having the accused enter into an undertaking in Form 11.1 (Undertaking Given to a Peace Officer or an Officer in Charge) which contains, in preprinted form, all available conditions.

Cautionary Note

- Police officer release is not available if the offence is punishable by five or more years in jail.
- The wording of some of the conditions in Form 11.1 may not provide adequate protection to victims. According to case law, the "no-contact" order used by courts gives greater protection to victims than the "non-communication" condition in Form 11.1.
- Police have no power to impose a weapons prohibition (as distinct from a firearms prohibition). When a weapon (such as a knife) is used or threatened, serious consideration should be given to seeking a weapons prohibition through a bail hearing. A court can impose a prohibition order for firearms, but additionally can order a prohibition for cross-bows, prohibited and restricted weapons, prohibited devices or ammunition and explosives. Police can seek such an order either under section 111 of the *Criminal Code* or through a bail hearing.

Police-imposed Conditions of Release in Form 11.1

Some protection is provided to the victim and her testimonial integrity by imposing a non-communication order, an area restriction, bail supervision, a firearms prohibition, a drug or alcohol prohibition or any other condition that the officer considers necessary to ensure the safety and security of any victim of or witness to the offence. Therefore, in every case where the police officer is satisfied the grounds exist, the following conditions should be considered:

a) the accused abstain from communicating, directly or indirectly, with any victim, witness or other person identified in the undertaking:
   - all such persons to be identified (using names whenever possible, or if the names are unknown, using an identifying description, e.g., "the family of Jane Doe including her mother, father, brother and sister");
   - consideration should be given to including the names of the victim's children and other family members, or any other person who may be subject to intimidation or undue pressure.

b) the accused not attend the family residence, the victim's place of work or any other place where the accused knows people named in the non-communication order could be found;
   - all places to be specified either by an area restriction, e.g., "2 block radius of the 100 block of Any Street" or a specific address e.g., "123 Any Street";
   - use caution not to provide the accused with unknown information on the whereabouts of a victim or witness.

c) the accused report to a bail supervisor at a designated location at specified times and as directed thereafter by the bail supervisor; and

d) the accused abstain from possessing any firearms, surrender any firearms in his possession and surrender any authorizations, licences, registration certificates to acquire or possess firearms
   - if considering a firearms prohibition, police should review paragraph 7 of this policy first.

Police have the power to order the accused to abstain from the consumption of drugs or alcohol. Finally, police may have the accused comply with any other condition considered necessary to ensure the safety and security of any victim of or witness to the offence.

On completing Form 11.1, police should forward it immediately to the Protection Order Registry and submit it for entry to CPIC.

When an accused is released by police, the police officer should forward the Report to Crown counsel (RCC) to their office as soon as possible so that Crown counsel are able to address any attempt by the accused to change the bail conditions in court at or prior to the first appearance.

iii) Bail Hearing Before a Justice

The justice's ability to order an accused to have "no contact" with a victim provides more complete protection from advances by the accused than the "non-communication" condition available in Form 11.1.

A justice must consider prohibiting possession not just of firearms, but also of cross-bows, prohibited and restricted weapons, prohibited devices or ammunition and explosives, or all such things. A justice may consider a weapons prohibition for weapons such as knives.

(iv) Requesting Court Ordered Detention

In some cases, police may be concerned the accused will not obey conditions of release if they are imposed. The following are recognized risk factors for further violence, **especially in combination**:

- a history of violence within or outside the relationship
- a history of breach of court orders
- death threats
- recent threats of suicide
- escalating violence
- substance abuse
- recent relationship changes (separation and divorce)
- recent employment problems, and
- the use or threatened use of weapons

In such cases, police should usually hold an accused for court and recommend Crown counsel seek a detention order. S.518(1)(d.2) of the *Criminal Code* requires a judge to consider any evidence submitted regarding the need to ensure the safety and security of a victim or witness.

6. When the suspect has departed the scene prior to the arrival of police, the officer must assess the likelihood that the suspect may return and must act in order to protect the victim. That should be accomplished by trying to locate the suspect for the purpose of arrest or by completing a Report to Crown counsel and making an immediate request to Crown counsel for an arrest warrant.

7. The breakdown of a relationship can often result in extreme violence. The investigator should inquire of the victim whether the suspect has access to firearms. This information enables the police to:

   i) take the necessary steps to remove firearms from the home;

   ii) initiate action to revoke any firearms-related certificate, licence, permit or authorization, and to apply for a hearing to get a prohibition order;

iii) consider releasing the accused on a recognizance with a firearms prohibition and certificate surrendering condition or provide information for the bail hearing; and

iv) log the incident into their departmental record keeping, so that the police can establish the history, frequency and pattern of violence over time.

8. If a suspect is released from police custody, police should make every effort to notify the victim of the suspect's release and of any conditions attached to his release in order to avoid situations where the victim is surprised by the suspect's return to the residence, especially at night. The arresting officer should always advise the releasing officer of the telephone number and address where the victim is located, in cases where the victim has consented to provide that information.

D. Investigation/Charge

9. A proactive charge policy is based on the assumption that police will conduct a complete investigation in every case, including those cases that do not immediately appear likely to proceed to prosecution. The officer will pursue the investigation with a view to obtaining sufficient evidence to proceed even without the cooperation of the victim. The evidence could include an admission by the offender, photographs of injuries, medical evidence, physical evidence, and a written statement by the victim and any independent witnesses.

10. Where there is evidence indicating an offence took place, the officer will submit an RCC recommending a charge even if no injury occurred and regardless of the desires of the victim or apparent willingness of the victim to testify in a criminal prosecution. Victims should not be asked if they want charges to be laid. An officer may record, on the witness sheet, his or her impression as to whether the victim will be a reluctant or hostile witness.

11. Suspects and victims should be advised that the justice system has adopted a proactive position in the prosecution of cases involving violence within relationships and that it is the responsibility of police and Crown counsel, not the victim, to lay and pursue criminal charges.

12. The consumption of alcohol or use of drugs by the suspect or victim should not prevent charges being recommended, unless the victim has no recollection of events and there is no other evidence on which to base a charge.

13. The fact that a victim does not provide a written witness statement should not prevent the submission of an RCC. The victim should be encouraged to provide a written statement at a later date and the officer must follow up, which may be more effective after a referral to victim services or other support services.

14. The history of violence, the accused's record and up-to-date information on the status of the accused must be included in the RCC, as well as any comments on the present fear of the victim for her safety and security. RCCs proposing charges, such as threatening, criminal harassment (stalking), mischief or harassing telephone calls, should also include information on the history of violence, the victim's fears, and whether a no-contact order is sought. These types of offences may be part of a continual pattern of violence perpetrated against the victim.

15. Police should not refer cases of violence within a relationship for diversion or recommend Alternative Measures.

16. When an officer exercises discretion and does not recommend a charge, the officer's decision should be documented on the case file and affirmed by a supervisor, bearing in mind the guidelines in this policy.

17. Delays in the justice system subject the victim and other family members, especially children, to emotional stress and risk of further harm. Police and Crown counsel should cooperate to process charges as expeditiously as possible, especially where a warrant request is made. The policing agency should designate the RCC with a "K" designation to assist Crown counsel in expediting these matters.

18. The police or victim services should ensure that the victims be kept informed of the progress of the investigation, including whether or not Crown counsel has approved a charge and the bail status of the accused.

19. Any child who is present at the time a violent offence is committed should be treated in a sensitive manner. Police should be aware that witnessing violence in the family has a proven traumatic effect on children.

19a. The police officer should always consider referring the victim and her child(ren) to available community services, or to the Ministry for Children and Families for services through a support services agreement, to assist the child(ren) in dealing with the impact of witnessing the violence. The officer should bear in mind that the suspect, in order to control or intimidate the victim, may have threatened her with removal of her child(ren) by the Ministry for Children and Families or others.

19b. Where it appears that a criminal offence related to child abuse or neglect has been committed, the police officer should thoroughly investigate the potential for charges.

19c. Where a police officer has reasonable grounds to believe that a child's health or safety is in immediate danger and there are no other means available to ensure the child's health or safety, the officer may "take charge" of the child under section 27 of the *Child, Family and Community Service Act*. The police officer does not need parental consent to take charge of a child. Upon taking charge of a child, the officer must immediately notify a Ministry for Children and Families child protection social worker or a First Nations child protection social worker with the appropriate delegated authority. The child protection social worker will speak with the parent and the child if possible, and make arrangements with the police to ensure that the child is safe. This may include returning the child to the victim parent at a place of safety, taking the child to a safe place identified by the victim parent (such as the home of a relative or family friend), or taking the child to another place of safety.

19d. Where a child is not in immediate danger but the police officer believes the child has been harmed or is at risk of harm, the officer must promptly make a report to a Ministry for Children and Families child protection social worker or a First Nations child protection social worker with the appropriate delegated authority. This includes situations where a child: has been or is likely to be physically harmed, including physical harm resulting from neglect; has been or is likely to be sexually abused or exploited; or is displaying behaviours that indicate severe emotional harm. Where there is any doubt about whether a report should be made, police should consult with a child protection social worker. Once a report

has been made, the child protection social worker assesses the information provided by the police and may meet with the parent and child to obtain further information before offering support services to the parent and child or initiating an investigation into the child's need for protection.

20. The victim, child witnesses or family members should not be interviewed in the presence of the suspect.

21. Immediate police response to reports of breaches of bail and probation are essential because of the often volatile and dangerous nature of violence committed against women in relationships. Studies show that risk to women is highest just before, during and immediately after separation. Breaches of bail and probation should be treated as crimes in progress as a known violent offender may be confronting the victim. Police should also consider use of the *Criminal Code* section that allows a peace officer to arrest an accused whom he/she reasonably believes is about to contravene a summons, appearance notice, promise to appear, undertaking, or recognizance, (s.524, 1999 *Criminal Code*). An occurrence report, including the grounds for arrest, should be provided to Crown counsel for a bail hearing.

22. When charges are unlikely, but a complainant, on reasonable grounds, fears injury to herself or children, or damage to property, police should apply to court on her behalf to have the individual placed on a recognizance under s.810 of the *Criminal Code*.

22a. The police should inform the complainant that the police must still complete a Report to Crown counsel and they will do so immediately. The police are now empowered to, and should, swear the information on the complainant's behalf.

23. In recognizance applications (peace bonds) under s.810, where the danger to the complainant is immediate but grounds for charges do not exist, a warrant should be sought.

24. In cases where Crown counsel have sought a material witness warrant for a victim who failed to attend court to testify, the police will make every effort to have the investigating officer who is familiar with the case execute the warrant.

E. Services to Victims

25. Police are dedicated to providing necessary assistance to the victims of violence and being responsive to their needs. When requested, the police will stand by to keep the peace in the event either party wishes to return to the residence to collect personal effects.

26. The attending police officer will inform the victim of available community services for herself and her child(ren), both verbally and with a handout card or pamphlet, and with her permission, refer her case to the appropriate agency.

27. The police officer will assist the victim and her child(ren) by arranging safe transportation to a transition home or other safe shelter, when requested. Where resources exist, crisis teams involving social services professionals should be relied upon for support.

28. The police officer will inform the victim of any community-based specialized victim services (including woman assault centres), and will refer her case with her permission. Where a

specialized program does not exist, permission to refer her case to a police or Crown-based victim service should be sought. Where no community, Crown or police-based victim services are available within the community, the police service of that jurisdiction will be responsible for providing victim assistance directly wherever possible.

29. The victim should be informed that a victim support worker or advocate, if available, may be present for the police interview of the victim, if she so wishes.

30. If a victim will not testify unless she is accompanied to court by a police officer, because the accused poses a danger to her, such arrangement should be made wherever possible.

F. Services to Special Needs Victims

31. The police may be the only chance for effective intervention in cases where the couple is elderly and abuse has been long term, or where cultural, religious, community or family values, sexual orientation or disability (physical or mental), make seeking assistance to stop the violence difficult or impossible. In such situations, respectful and dignified treatment of the victims and an understanding of the dynamics of violence against women in relationships is especially critical.

    Police must be sensitive and accommodating when dealing with victims/witnesses who have special needs by virtue of isolation, mobility restrictions, language or communication abilities. It may be necessary to alter investigative procedures for victims with special needs.

32. Support persons for a victim/witness should be permitted to be present during interviews, whether or not an interpreter is also present.

33. The accused or young children should never be used as interpreters, and the name of the interpreter utilized as well as the relationship to the parties, if any, should be recorded on the file.

34. Police must clearly indicate on the RCC witness pages that the victim has special needs because of mental or physical disability, or by virtue of age, religion or cultural values. If no victim or support service is available to meet the victim's needs, that information should be communicated to Crown counsel.

G. Monitoring

35. As violence against women in relationships involves recurring offences, it is important that the details of all calls to a police service be recorded, whether or not an immediate police response is required. All "spouse assault" complaints should also be coded in such a manner that case trends and dispositions are retrievable.

36. The execution of warrants should be expedited in cases of violence against women in relationships, as in all crimes of violence where the complainant is at further risk.

Crown Counsel

A. Introduction

Crown counsel do not act on behalf of any specific victim, but rather represent, on behalf of society, a wider public interest.

The prosecution of cases of violence against women in relationships often involves a reluctant victim/witness. Crown counsel must recognize and indicate to the victim that despite her reluctance, society has an interest in prosecuting offenders who perpetrate violent crimes within their relationships. The parties must never be led to believe that the victim has the power to initiate or end criminal charges.

Complex factors affect the victim's willingness to cooperate with the criminal justice system. This policy promotes rigorous prosecution of these offences, but also outlines factors which may tend to re-victimize the women so that in administering the policy an appropriate balance can be struck between the interests of the victim and the criminal justice system.

B. Charge

1. The Crown counsel charge standard requires that:

   (i) there be a substantial likelihood of conviction; and

   (ii) a prosecution of the accused is in the public interest.

   Given the incidence of violence against women in relationships in Canada, the prosecution of such offences is almost invariably in the public interest. The decision to charge or continue the prosecution shall not be governed by the wishes of the victim. Crown counsel should consider charges in such cases, even if the nature of the offence is minor.

2. Where there is a history of violence, laying additional counts relating to serious incidents in the past should be considered.

3. If a written statement cannot be obtained by the police, charges may be approved if they are made out on the basis of an oral statement. Crown counsel should request police to take a written statement. Where there is insufficient evidence to meet the Crown counsel charge standard, but it appears that the suspect may have assaulted or otherwise abused the victim, Crown counsel should ensure the victim has been referred to victim services by police or Crown counsel and should also consider whether a s.810 recognizance is needed and appropriate.

4. All independent evidence should be carefully considered with a view to providing corroboration and with a view to proceeding in the absence of the victim as a witness.

5. When a victim indicates an unwillingness to testify, Crown counsel should refer her to victim services, if available. Crown counsel or Crown Victim/Witness Services should also try to consult personally with the victim at the earliest opportunity to explain the court process and the rationale behind the Ministry of Attorney General policy, as well as to advise of the availability of support services throughout the court process.

6. Coordination should occur as necessary throughout the court process between Crown counsel and specialized or other victim services. Crown counsel and Crown Victim/Witness Services should consult victim support workers specializing in services to battered women where available. If the victim consents, the worker may be present during interviews.

7. Crown counsel should be aware that inappropriate influence may be exerted by the accused at any stage of the court process and that women often deny the existence or severity of violence within their relationships. In almost all cases, public interest considerations apply in favour of prosecution; therefore, charges should usually only be stayed upon establishing that the victim will not testify and that no other evidence is available. Caution should be exercised in staying charges where:

   (i) threats or inappropriate influences may be affecting the victim's willingness to testify;

   (ii) there is a history of violence; or

   (iii) the woman refuses to meet with Crown counsel, so an assessment of the situation is not possible.

8. The processing of reports by Crown counsel must be expedited, as unnecessary delay increases emotional stress and intimidation experienced by the victim. Whenever possible, Crown counsel should attempt to ensure early trial dates and oppose adjournment applications that are not well founded.

8a. If Crown counsel is of the opinion that the conditions of a release by the police do not adequately address the concerns for the safety and security of the victim or the public, Crown counsel should apply for a warrant from a justice pursuant to s.512 in the public interest. If the accused has never been arrested, consider what terms would be required to ensure the safety and security of the victim or witness and endorse the terms on the warrant. If Crown counsel is of the opinion the accused should be detained, seek an unendorsed warrant.

9. If recommended charges are reduced or rejected, Crown counsel are obliged to ensure the charging decision and reasons are communicated to the police so they may advise the victim of the decision and reasons.

10. Alternative Measures, in cases of violence against women in relationships, should generally be considered inappropriate, particularly prior to charges being laid, given the concern of past or further assaults on the victim. Alternative Measures may be considered, in exceptional circumstances, provided the following conditions are met:

   i) the victim must have been consulted and her wishes must have been considered as a factor;

ii) the victim must have been referred to victim services where Alternative Measures and support services are explained;

iii) Crown counsel must determine that there is no apparent history of violence;

iv) if appropriate, the offender must agree to complete a treatment program approved by probation or the Alternative Measures program;

v) the offence must not have been of such a serious nature as to threaten the safety or tolerance of the community; and

vi) Regional or Deputy Regional Crown counsel should be consulted before Alternative Measures are approved.

11. Crown counsel should consider laying charges under sections other than the assault section of the *Criminal Code*. For example, criminal harassment, threatening, mischief or harassing telephone call charges may be appropriate and serve to prevent the escalation of violence into physical force against the victim.

12. When there is not enough evidence to approve charges, Crown counsel should consider use of *Criminal Code* s.810 recognizances or where applicable, charges of breach of orders under the *Family Relations Act*.

C. Bail Hearing

Police Officer Release

1. Amendments to the *Criminal Code* in June 1997 and December 1999 have expanded police powers to release an accused on conditions (non-communication, non-attendance, bail supervision, firearms prohibitions, alcohol or drug prohibitions, safety and security of a victim or witness). The police have no power, however, to impose a weapons prohibition.

   If the accused is not in custody at the time that the charges are approved, and if Crown counsel is of the opinion that the conditions of release by the police do not adequately address safety and security concerns of the victim and the public, Crown counsel approving such charges should request a warrant pursuant to s.512 in the public interest.

   Because the accused can attend to court before the first scheduled appearance and attempt to change the release conditions given on the undertaking to the police, the police should be encouraged to forward the RCC as soon as possible so that the Crown counsel is able to address any attempt by the accused to change the bail conditions. Under s.503(2.3), neither the Crown counsel nor the accused has the right to apply to change the release conditions after the first appearance.

Court Ordered Release or Detention

2. As of December 1999, amendments to s.515 of the *Criminal Code* allow a court to impose any conditions considered necessary for the safety and security of a victim or witness when considering the release or detention of the accused. Crown counsel should be aware that a court is required to consider the imposition of a firearms prohibition (including a prohibition of other weapons subject to the *Criminal Code*).

Crown counsel should ensure the police have provided any history of abuse in the RCC and that information should be presented at the bail hearing.

Seeking no contact conditions (even if detained), area restrictions, weapons and firearms prohibitions, reporting conditions, drug and alcohol prohibitions and any other condition to ensure the safety and security of the victim or a witness should be considered for every bail hearing.

Where the accused poses a danger to the victim or anyone else, a detention order should be sought. The following are recognized risk factors for further violence, **especially in combination**:

- death threats
- recent threats of suicide
- escalating violence
- substance abuse
- recent relationship changes (separation and divorce)
- recent employment problems, and
- the use or threatened use of weapons

A court must consider any evidence submitted regarding the need to ensure the safety or security of any victim or witness and may impose conditions to ensure such safety or security.

3. If the accused is bound by a civil court which imposes different conditions from those imposed at the bail hearing, Crown counsel should ask the court to advise the accused that he must obey the most restrictive aspects of all orders binding upon him.

4. Children are often used by abusers as a means of control over their partners. Whenever a no-contact order is requested or granted and an offender seeks a condition which allows access to children, Crown counsel should carefully consider whether such an access order poses a risk to the victim and her children, or defeats the purpose of the no-contact order.

5. Wherever possible, the victim should be notified of the bail hearing and resulting bail order and terms. Victim services may be of assistance in this regard.

6. If the accused and victim later seek removal of the no-contact condition of bail, Crown counsel should contact the victim and bail supervisor for further information before addressing the matter in court. If there is a significant history of abuse, or the bail supervisor or Crown counsel determines that the victim may be at risk, an application to remove the no-contact order should be opposed by Crown counsel, and the reasons stated to the court. It may be advisable to provide the victim with further information on specialized victim services in order to assist her in dealing with the impact of the criminal justice process on her relationship and life.

7. In the case of an accused in custody as a result of a breach of bail, an anticipated breach of bail, or for re-offending, Crown counsel should apply to cancel the prior bail status and oppose the release of the accused if further violence has been threatened or committed against the victim, if she fears for her safety, or other circumstances warrant such action.

8. Upon adjournment of a case involving violence against a woman in a relationship, Crown counsel should assess the need for any change in bail conditions pending trial or sentencing.

D. Case Preparation

1. Crown counsel who interviewed the victim should prosecute the case wherever possible.

2. Crown counsel will make every reasonable effort to interview the victim well in advance of the preliminary hearing or trial date, to support and prepare the witness, advise her of the rationale behind the Ministry of Attorney General policy, and determine if there has been any intimidation or interference. If the victim consents, a victim support worker should be present.

3. Should Crown counsel determine that the witness has been subjected to threats or interference, the matter should be referred back to police for investigation or re-arrest for a bail hearing. Laying additional charges is crucial in attempting to address the recurrent nature of violence against women in relationships.

4. The victim should always be personally served with a subpoena rather than being mailed a subpoena or notified by letter. The witness needs to be in a position, when under pressure not to testify, to indicate that she is under court order.

5. The investigating or another attending officer should usually be notified to attend the trial. If the victim will only attend with a police escort, because the accused poses a danger to her, efforts to arrange such transportation should be made.

6. Where the accused may raise a defence suggesting accidental injury, Crown counsel should consider calling medical evidence or similar fact evidence tending to discredit such a defence.

7. Crown counsel in remand or trial court should bring to the attention of the presiding judge cases where the accused had not sought counsel and intends to proceed to trial. The accused should be encouraged to seek counsel because the offence is regarded as serious and to avoid a trial where the accused cross-examines his spouse, a process which is often frightening and intimidating for the victim.

8. Crown counsel should not apply for a material witness warrant for a victim who has failed to appear, unless the circumstances of the case are severe and there is some likelihood the victim will testify, or the testimony is also required for separate counts involving a child victim.

9. Crown counsel should be sensitive to hardship to the victim in executing a material witness warrant. Crown counsel should request police to make all reasonable efforts to ensure a minimum of hardship to the victim in the execution of the warrant.

10. Where a judge may be considering holding a woman in contempt for failing to attend or committing her to prison for failing to testify, Crown counsel should usually take the position that such proceedings are inappropriate, because of the ineffectiveness of such action and concerns over re-victimization. Considerations may vary if a child is involved and at risk.

11. Crown counsel should be sensitive, accommodating and aware of services available, including support services, where a victim has special cultural, communication and/or mobility-related needs.

12. Crown counsel assigned to a prosecution will make every effort to maintain conduct of the case until the conclusion of the trial or preliminary hearing.

E. Sentencing

1. Crown counsel should consult the victim before making a commitment in plea discussions which affects the victim or sentence of the accused.

2. Crown counsel should seek appropriate conditions of probation, including no-contact and reporting conditions, and where appropriate, successful completion of an assaultive men's treatment program to the satisfaction of the probation officer. Reporting conditions are necessary to enable supervision of contact between parties and to monitor any treatment ordered for the offender. If an offender is already in an assaultive men's treatment program, the successful completion of that program should be a condition of probation.

3. The victim should always be advised by Crown counsel or victim services of the date of the sentencing hearing.

4. Where there is a history of abuse, even in the case of a first-time offender, Crown counsel should take the position that such history is relevant on sentencing. Therefore, Crown counsel should raise the accused's history of violence and prepare the complainant to give evidence at the sentencing hearing if required.

5. Since violence against women in relationships is a persistent problem, the goal of deterrent sentencing should be pursued and the following factors should be considered when recommending an appropriate sentence:

   (i) a conditional discharge in such cases is generally not in the public interest;

   (ii) given the cyclical nature of the offence, a period of supervised probation, sufficient to allow for the successful completion of an assaultive men's treatment program, may be appropriate as part of any sentence imposed; and

   (iii) there is an element of breach of trust in the commission of a crime of violence within a relationship which is an aggravating factor (s.718.2).

6. Crown counsel should consider making submissions on sentence about the dynamics of violence against women in relationships and the magnitude of the problem in Canada. The court should be advised of any options for treatment programs and Crown counsel should advocate appropriate treatment. Family or couples' counselling is inappropriate, given the ongoing power imbalance which exists between the accused and the victim.

7. Victim impact statement forms should be made available to the victim in a manner which does not jeopardize her safety. Crown counsel should present the victim impact statement, where available, to the court in cases of violence against women in relationships.

8. Crown counsel or a victim services representative should explain the case outcome to the victim.

F. Breach of Court Orders/S.810 Recognizances

1. Acting in conjunction with probation and police services, Crown counsel must recognize the importance of breach of probation charges in cases of violence against women in relationships, where the nature of the crime if often cyclical and the offender may pose a continuing risk if treatment or other conditions are not fulfilled. Breach of probation charges should be rigorously pursued and are not appropriate charges to be dropped as a result of plea discussions.

2. In the case of a suspended sentence or conditional discharge, where a conviction for breach of probation or further offence has occurred, Crown counsel should consider applying to revoke the suspended sentence or to alter the terms of probation in order to ensure that the past violence and risk of future violence against the victim are dealt with as effectively as possible.

3. Applications for recognizances under s.810 of the *Criminal Code* should be expedited by Crown counsel engaged in charge approval, especially when a warrant is requested. The safety of the victim will usually require the Crown counsel to request a warrant so that appropriate bail conditions may be imposed.

4. Crown counsel conducting a s.810 recognizance application by a woman who is a victim of violence within her relationship should be aware that mutual recognizances are almost invariably inappropriate.

G. Services to Victims

1. Crown counsel should familiarize themselves with the specialized victim services available in their area and should, wherever possible, refer victims to those services.

1a. A victim has informational rights under the *Victims of Crime Act*. Victim services, where existing, have been designated to provide the necessary information. All victims should be encouraged to allow referral of their cases to victim services to ensure the necessary information is provided.

2. Crown counsel should be aware of the onerous nature of the justice system (e.g., numerous interviews, travelling to court), especially for those with special needs or disabilities, and should provide extra support, where possible, including in those communities where no victim services exist.

H. Monitoring/Coordination

1. Responsibility for ensuring that this policy is implemented and monitored rests with Regional Crown counsel. The Criminal Justice Branch will develop and maintain a system to monitor the Crown counsel portion of this policy.

   Crown counsel are encouraged to attend community meetings, workshops and symposiums on violence against women in relationships. Where "Wife Assault Coordination Projects" or other wife assault coordinating committees exist, a Crown counsel representative must be provided.

Corrections

A. Introduction

Court orders are a critical safety issue for the victim and must be actively monitored and enforced. Institutional and community corrections must establish protocols to ensure the victim is informed of court orders, their contents, implications and changes to orders that may affect their security. Victims must be given information on what action to take in the event of an alleged offence and breach of a court order. Victims should also be advised that they may be required as witnesses in a subsequent hearing. Where possible, these cases should be referred to specialized probation officers.

B. Alternative Measures

In cases of violence against women in relationships, Alternative Measures are not generally appropriate, given the possibility of further assaults on the victim. Alternative Measures may be considered in exceptional circumstances, providing the following conditions are met:

- the victim must have been consulted and her wishes must have been considered as a factor;
- the victim must have been referred to victim services where Alternative Measures and support services are explained;
- the probation officer must determine that there is no apparent history of violence and that the victim's wishes have not been affected by intimidation or coercion;
- if appropriate, the offender must agree to complete a treatment program approved by probation or the Alternative Measures program; and
- the offence must not have been of such a serious nature as to threaten the safety or tolerance of the community.

C. Institutions

1. Remand Custody

Should an accused be denied bail, upon classification, the director or designate should inform the accused that the victim will be notified and will receive information regarding subsequent court dates and any change in custodial status of the accused. Contact with the victim by the institution should not jeopardize her safety. Contact may be made through an identified third party, such as a victim support worker or other designated contact person. If contact is not made, the reasons for not doing so should be noted on the accused's case file.

2. Sentenced Custody

Upon admission for serving a sentence, where no community probation officer has been involved, the director or designate shall inform the offender that the victim will be notified and will receive notice of the sentence length, probable date of discharge and, where necessary, how to report breaches of a no-contact condition of probation or parole. The director or designate will keep the victim notified of relevant changes in custodial status including institutional transfers and any form of conditional release. If the victim is not contacted the reason(s) for not contacting her must be recorded in the case file.

While in custody the offender should not be allowed any contact whatsoever with the victim.

D. Bail

1. The bail supervisor will inform the accused that the justice system has adopted a proactive stand in the prosecution of cases of violence against women in relationships and that it is the criminal justice system and not the victim pursuing the charges.

2. The bail supervisor will inform the accused that the victim will be made aware of the bail conditions and means for reporting breaches of conditions.

3. Without jeopardizing the safety of the victim, the bail supervisor will obtain her name, address and telephone number from Crown counsel and supply her with:

   i) a copy of the bail conditions;

   ii) information regarding reporting breaches of protective conditions of bail, including the information that she may be required as a witness in a subsequent hearing;

   iii) information regarding specialized support services in the community; and

   iv) on-going information relevant to changes in protective conditions of bail.

   If the victim is not contacted, the reason(s) for not contacting her must be recorded in the case file.

4. The local bail authorities shall create linkages with Court Services and the local police to ensure that relevant information on Canadian Police Information Centre (CPIC) is entered and updated when:

   i) there is a change in bail order conditions;

   ii) there is a change in court dates; and/or

   iii) the case is no longer active because of court disposition, stay of proceedings or deletion of the bail supervision condition by the court.

5. If the accused breaches a protective condition of bail, the bail supervisor shall forthwith submit a report to Crown counsel. If the bail supervisor believes that an accused has or is about to breach a protective condition of bail, the police should be advised immediately. In the case of an alleged breach of a protective condition of bail where no action is taken by the bail supervisor, then the case should be discussed with the supervisor and reasons for not taking action recorded in the case file.

6. If there is a family court counsellor involved with the family of the offender, the bail supervisor and the family court counsellor should obtain the consent of the parties to share case information.

E. Pre-Sentence Reports

Probation officers preparing reports on these offences should have specialized training in the relationship dynamics of victims of violence in relationships.

1. When preparing a pre-sentence report, the probation officer shall contact the victim, in a manner so as not to jeopardize her safety. The purpose of the contact is:

   i) to explain the function of the pre-sentence report;

   ii) to obtain information relevant to the history and dynamics of the relationship;

   iii) to receive the victim's version of the offence;

   iv) to obtain information regarding the impact of the offence on the victim and others affected, particularly the children, and to ensure the information is presented in an appropriate fashion to the court;

   v) to discuss possible court recommendations directed towards her and her children's safety; and

   vi) to advise her of available specialized community resources.

2. Where a victim is not contacted, the probation officer shall state the reason(s) for not contacting her in the pre-sentence report.

3. The probation officer shall inform the judge of available assaultive men's treatment programs. Treatment should not be considered as an alternative to incarceration or any other sanction, and, if made a condition of probation, the probation term must be of sufficient length to allow for successful completion of the treatment program. Appropriate phrasing of the recommendation such as; "attend, participate and complete assaultive men's counselling as directed by the probation officer, and to the satisfaction of the assaultive men's treatment program staff and the probation officer" is required.

F. Post-Sentence Supervision: Probation/Parole and Conditional Release

1. The probation officer will inform the probationer/parolee that the victim and the police will be contacted and made aware of the contents and protective conditions of the probation order/parole certificate, and be supplied with a copy of the order certificate.

2. The probation officer will inform the probationer/parolee and victim that the criminal justice system is taking a proactive stand in dealing with violence against women in relationships and therefore any breaches of the order/certificate will be acted upon.

3. Should the probationer/parolee be required to attend an assaultive men's treatment program as a condition of the order/certificate, he shall be informed that he is expected to successfully complete the program to the satisfaction of the program personnel and the probation officer.

4. The probation officer will contact the victim to:

   i) inform her of the contents of the probation order/parole certificate and in particular the protective conditions;

   ii) supply her with a copy of the order/certificate; and

   iii) advise her of how to report breaches of protective conditions and that she may be required to be a witness in a subsequent hearing for breaches of those conditions.

5. If the probationer breaches a protective condition of the probation order, the probation officer will:

   i) submit a RCC; or

   ii) discuss the situation with an immediate supervisor and record the reasons for not reporting the alleged breach to Crown in the file; and

   iii) give the victim a written explanation of the decision not to proceed with the breach of the order.

6. If the parolee breaches a protective condition of the certificate of parole, the probation officer will:

   i) immediately contact the B.C. Board of Parole to provide and record information regarding the breach;

   ii) recommend to the B.C. Board of Parole to issue a warrant for the arrest of the parolee; or

   iii) if a warrant is not recommended, or the board does not issue a warrant, the reasons are to be recorded in the file; and the supervising probation officer should provide the victim with a written explanation of the decision to not arrest.

7. If a family court counsellor is involved with the family of the probationer/parolee, the probation officer and family court counsellor should obtain the consent of the parties to share case information.

G. Role of Family Court Counsellors

1. Protecting all parties in relationships from emotional, psychological and physical abuse is the foremost concern of all aspects of the criminal justice system.

2. The risk of violence against women and children increases in the period just before, during and after the breakdown of a relationship. Violence in relationships is harmful to the children in the family even when they are not the direct victims or witnesses to the violence.

3. Family court counsellors often use mediation or conciliation as a means of resolving issues of conflict concerning custody, access and maintenance. Because of the possibility of

violence, family court counsellors must have specialized training in the dynamics of violence against women in relationships, and in the effects of violence in families on children.

4. The role of the family court counsellor includes reducing conflict between the parents, working on behalf of the best interest of the children and dealing fairly with both parents. The goals of the counsellor include:

   i) assuring the safety and well-being of all family members;

   ii) educating families about the effects of violence on adults and children;

   iii) referring members of the family to appropriate services; and

   iv) ensuring that plans are made in an environment free from coercion or intimidation.

5. The process of mediation requires a balance of power between the negotiating parties. The family court counsellor should not undertake mediation as a means of assisting the parties to resolve their conflict without first identifying the power and control dynamics of the relationship, then taking the required steps to ensure a safe and open negotiating environment. The issue of violence itself should never be mediated.

6. Prior to offering mediation or conciliation services, family court counsellors shall interview the parties individually, and screen for violence and other power and control imbalances. This is essential in every case in order to assess the dynamics operating within the family. The counsellor should place particular emphasis on establishing whether the children have witnessed violence. This screening process also applies to court-ordered mediation, and custody and access reports.

7. If the violence is recent or current, the parties shall NOT be interviewed in a joint session. The family court counsellor should ensure the victim has a personal safety plan in place. The family court counsellor should then refer the victim to a community agency for support, to police for potential charges and to her lawyer, if she has one.

   Note: Because confidentiality provisions do not extend to discussions of alleged criminal activity or the potential abuse of children, care must be taken to record these discussions in a detailed and accurate way.

8. In cases where there are criminal charges stemming from violence against a woman in a relationship, caution must be exercised before facilitating a *Family Relations Act* agreement, which could include custody, access and/or maintenance. For example:

   i) In making bail and probation orders that prohibit contact with the victim, a judge will often use the words, "except for the purposes of facilitating access to the children as arranged by a family court counsellor."

      This wording does not create an access order. The family court counsellor or custodial parent are not required to arrange such access unless a specific court order or agreement for access is already in place.

   ii) When facilitating *Family Relations Act* agreements, family court counsellors must ensure that if access is to take place, all safety considerations have been addressed.

   iii) In making recommendations to the court, the family court counsellor should identify all the safety considerations which need to be taken into account before access can safely take place.

9. If a bail supervisor or probation officer is involved in the case, the family court counsellor should obtain the consent of the parties to share case information.

10. Family court counselling offices shall have a defined escape and safety plan in place in order to provide a safe environment in the workplace.

H. Special Needs Victims

1. Corrections personnel should at all times be sensitive to the special concerns or needs of women, including aboriginal women, women of colour, immigrant and refugee women, lesbians, women with disabilities and women who are isolated or in rural areas. Information and, where necessary, assistance should be sought in dealing with the special needs of such women.

Victim Services Programs

A. Introduction

Provision of appropriate assistance to victims is essential to keep victims informed of the criminal justice process, to prepare them for the court experience, and to refer them to services that may help them through the justice system and to deal with the violence in their relationships.

Victim services workers must always keep in mind that their actions should not jeopardize the safety of the victim or violate confidentiality requirements.

B. Information and Assistance

1. All victim services programs in an area must set in place written protocols to ensure that, in liaison with police, Crown counsel and Court Services, victims are notified of any pertinent facts relating to charges as they proceed through the criminal justice system from police involvement to court disposition. Included should be information on arrest of an accused, obtaining a peace bond, status of charges and disposition of the charges. The victim should be advised of any conditions of bail or probation, either by probation or victim services.

2. Assistance should be provided through court support, orientation and information. Whenever possible, additional necessary assistance should be given to victims who require transportation or child care, or who have special needs.

3. Information or referrals must also be given to victims regarding the custody of children, maintenance, available counselling services, transition houses, the ability to obtain legal counsel or any other advocacy assistance they may require.

C. Victim Impact Statements

1. In every case, victim services workers must assist the victim to complete and forward Victim Impact Statements (VIS) to Crown counsel. Reasons should be noted on the file if a VIS is not completed.

Recommendations to Justices of the Peace and Trial Coordinators

In light of the policies being implemented for police, Crown counsel and corrections, the Ministry of Attorney General recommends to the Chief Judge of the Provincial Court that the following provisions related to cases of violence against women in relationships be added to the policy governing the action of justices of the peace and trial coordinators:

1. A justice of the peace approached by a woman for the purpose of seeking a peace bond should immediately advise her that the police will assist her in preparing the necessary documentation which will then be forwarded to Crown counsel, who will contact her so that she may swear an Information before the justice of the peace.

2. Violence against women in relationships is known to involve recurring offences which may escalate in severity. When a warrant is requested in a peace bond application or in a violence against women in relationships charge, careful consideration should be given to granting that warrant.

3. Training programs about violence against women in relationships should be developed and implemented for new and current justices of the peace. These should include information on values, attitudes and myths that have operated to treat such violence as non-criminal. In particular, they should include information about the ministry policy regarding the criminal processing of cases involving violence against women in relationships. Such training programs should be developed in cooperation with police, Crown counsel and community groups working with battered women.

4. If an individual requests to swear an Information respecting allegations of violence within a relationship, a justice of the peace should inquire whether the informant has advised the police of the circumstances. Where the police have not been informed, the justice of the peace must encourage the informant to contact the police for that purpose.

5. Adjournments sought for cases involving violence against women in relationships should be well founded to reduce unnecessary delays.

6. An accused person desiring to set a trial date for a case involving allegations of violence within a relationship should be encouraged to seek counsel before setting the trial date, because:

- the offence is regarded as serious; and
- it would avoid a situation where the accused cross-examines his spouse.

In addition, the accused should be advised that the victim cannot prevent charges from proceeding.

7. Dates requested for cases involving allegations of violence against women in relationships should be set as early as trial scheduling will allow, given the emotional stress and often dangerous situations which develop in such cases.

8. Crown counsel who interviewed the victim should usually conduct the prosecution. Cases involving violence against women in relationships should not be moved by trial coordinators from the courtroom in which they have been set, unless assigned Crown counsel and the victim are consulted and agree to the transfer.